

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

_____	)	
FITNESS RESOURCE ASSOCIATES, INC.	)	
	)	
Plaintiff,	)	
v.	)	Civil Action
	)	No. 05-10003-RGS
AEROBICS AND FITNESS ASSOCIATION	)	
OF AMERICA, INC.	)	
	)	
Defendant.	)	
_____	)	

**MOTION OF AEROBICS AND FITNESS ASSOCIATION OF AMERICA, INC., FOR A  
PROTECTIVE ORDER PREVENTING FITNESS RESOURCE ASSOCIATES, INC.  
AND THE HUSBAND OF ITS PRESIDENT FROM VIEWING AFAA'S TRADE  
SECRETS AND CONFIDENTIAL INFORMATION**

Aerobics and Fitness Association of America, Inc. ("AFAA") moves pursuant to Fed. R. Civ. P. 26 (c)(7), and with good cause shown, for a protective order to ensure that AFAA documents and other material requested during discovery, and that constitute trade secrets and other confidential information, not be revealed to Fitness Resources Associates, Inc. ("FRA") or the husband of FRA's President, as FRA has insisted upon, and that it instead be made available only to FRA's attorneys and independent expert.

In support hereof, AFAA states that FRA is a competitor of AFAA and, as set forth in AFAA's counterclaim, FRA has acted in concert with other competitors to unfairly harm AFAA's business in the fitness certification industry. Allowing FRA to gain access to AFAA's trade secrets and confidential information would greatly prejudice AFAA's business.

Conversely, no harm would be caused to FRA by having its counsel and/or expert review if

necessary any such information. In further support hereof, AFAA submits a proposed protective order (See Exhibit 1) and an accompanying memorandum of law.

AEROBICS AND FITNESS ASSOCIATION OF  
AMERICA, INC.

By its attorneys,

September 20, 2005

/s/ Edward V. Colbert III  
Richard J. Grahm (BBO#206620)  
Edward V. Colbert III (BBO #566187)  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

**RULE 26 (c) CERTIFICATE**

I, Edward V. Colbert III, hereby certify that I have on several occasions conferred with counsel for FRA in a good faith attempt to resolve this dispute over the terms of a protective order.

/s/ Edward V. Colbert III  
Edward V. Colbert III

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 20th day of September 2005 served a copy of the foregoing pleading upon all parties hereto by mailing copies thereof, via first class mail, postage prepaid, properly addressed to:

Gregg S. Blackburn, Esq.  
Casner & Edwards LLP  
303 Congress Street  
Boston, MA 02210

/s/ Edward V. Colbert III  
Edward V. Colbert III

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
FITNESS RESOURCE ASSOCIATES, INC. )

Plaintiff, )

v. )

AEROBICS AND FITNESS ASSOCIATION )  
OF AMERICA, INC. )

Defendant. )  
\_\_\_\_\_ )

Civil Action  
No. 05-10003-RGS

**STIPULATION AND ORDER REGARDING CONFIDENTIALITY OF  
TRADE SECRET, PROPRIETARY AND/OR FINANCIAL INFORMATION**

By the signatures of their attorneys of record to this document, the parties to this action stipulate and agree that:

1. Any trade secret, proprietary and/or financial information provided by Aerobics and Fitness Association of America, Inc. ("AFAA") to Fitness Resource Associates, Inc. ("FRA"), in response to FRA discovery requests, that AFAA claims and marks as "CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY" shall be:

a. Deemed confidential information that may be used by counsel for FRA solely for the purposes of this action; and

b. FRA Counsel shall not reveal or disclose this information, or make it available for inspection and copying to any person, including FRA or any shareholder, officer, employee or agent of FRA. FRA counsel may make confidential information available to attorneys or employees of FRA counsel's law firm for purposes of this action, or to others with the express written permission of counsel for AFAA or by Order of the

Court. In the event FRA counsel retains an expert or experts in this action, each such expert shall sign and forward to counsel for AFAA an affidavit in the form attached as Exhibit A to this Order, prior to receiving or reviewing any confidential information.

2. In the event AFAA elects to produce documents for inspection and FRA elects to inspect them, no designation of confidential information need be made in advance of the inspection. For purposes of such inspection, all documents produced shall be considered as confidential information. If FRA counsel selects specified documents to be copied, AFAA shall be obligated to designate any confidential information in accordance with paragraph one at the time the copies are produced.

3. Marking the cover of a multi-page document "CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY" shall be deemed a designation of all pages of the document as confidential, and subject to the provisions of this Stipulation and Order.

4. AFAA shall have 30 days following receipt of a deposition transcript to designate as confidential specific portions of the transcript, and shall serve such designation upon counsel for FRA. During the 30-day period following receipt of a deposition transcript by AFAA, the entire deposition transcript shall be deemed confidential and subject to the provisions of this Stipulation and Order. Following the 30-day period, all portions of a deposition transcript designated confidential by AFAA shall be subject to the provisions of this Stipulation and Order.

5. If the parties are unable to resolve any dispute as to whether the information is or should be regarded as confidential and subject to the provisions of this stipulation, and only after attempts to resolve any dispute, counsel for FRA may file the disputed information with the Court, under seal, and seek a ruling from the court in camera concerning whether the information deserves the protection of this stipulation as confidential.

6. All documents filed with the Court by any party to this action that are agreed by the parties, or ordered by the Court, to comprise or contain financial and proprietary information that could be potentially injurious to AFAA's business as commercially or competitively sensitive, including all pleadings, deposition transcripts, exhibits, discovery responses or memoranda purporting to reproduce or paraphrase such information, shall be filed in sealed envelopes or other appropriately sealed containers that shall be endorsed with the title of this action, an indication of the nature of the contents of the sealed envelopes or other containers, the word "CONFIDENTIAL" and a statement in substantially the following form:

"This envelope contains confidential documents and is not to be opened, nor are the contents to be displayed or revealed except by Order of this Court."

7. Within 30 days following the conclusion of this litigation, all documents, deposition transcripts and other materials, and all copies, summaries and reports containing information or material that have been marked "CONFIDENTIAL- FOR ATTORNEY'S EYES ONLY" will be returned to counsel for AFAA.

8. The parties intend that this stipulation be approved and adopted as an Order of the Court and that its violation will be enforceable as an Order of the Court, including by means of proceedings for contempt of court.

9. The inadvertent or unintentional disclosure of a confidential document and information shall not be deemed a waiver, in whole or in part, of AFAA's claim of confidentiality.

10. Nothing in this stipulation or any order resulting from this stipulation constitutes a waiver or admission as to the admissibility or lack of admissibility of any matter at the trial of

this action.

FITNESS RESOURCE ASSOCIATES, INC.

By its attorney,

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Gregg Blackburn (BBO #044430)  
Casner & Edwards LLP  
303 Congress Street  
Boston, MA 02210  
(617) 426-5900

Respectfully submitted,

AEROBICS AND FITNESS  
ASSOCIATION OF AMERICA, INC.

By its attorneys,

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Richard J. Grahm (BBO#206620)  
Edward V. Colbert III (BBO#566187)  
LOONEY & GROSSMAN, LLP  
101 Arch Street  
Boston, Massachusetts 02110  
(617) 951-2800

SO ORDERED:

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By the Court

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
FITNESS RESOURCE ASSOCIATES, INC. )  
)  
)

Plaintiff, )  
)

v. )

AEROBICS AND FITNESS ASSOCIATION )  
OF AMERICA, INC. )  
)  
)

Defendant. )  
\_\_\_\_\_ )

Civil Action  
No. 05-10003-RGS

AFFIDAVIT OF [ ]

I [ ] , hereby deposes and say that:

1. I have read the Stipulation and Order Regarding Confidentiality Of Certain Proprietary And Financial Information ("Order"), in the above-captioned matter.

2. I understand that pursuant to the Order, I am authorized to review information that has been designated confidential upon signature of this affidavit.

3. I agree that I will not disclose or discuss confidential information I have reviewed except with counsel for FRA, or as authorized by this Court.

4. I understand that should I disclose or discuss information designated confidential, I may be held in contempt of a Court Order.

Signed Under Penalties of Perjury this \_\_ day of \_\_\_\_\_, 200[ ].

\_\_\_\_\_

[Notary]